



OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2200

Rules of Procedure; Technical Amendments

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Technical amendments.

SUMMARY: This document makes technical amendments to the final rule published by the Occupational Safety and Health Review Commission in the Federal Register on April 10, 2019, and corrected on August 30, 2019, October 4, 2019, and October 15, 2020.

That rule revised the procedural rules governing practice before the Occupational Safety and Health Review Commission (OSHRC).

DATES: Effective on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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SUPPLEMENTARY INFORMATION: OSHRC published revisions to its rules of procedure in the *Federal Register* on April 10, 2019 (84 FR 14554), and published corrections on August 30, 2019 (84 FR 45654), October 4, 2019 (84 FR 53052), and October 15, 2020 (85 FR 65220). This document makes further technical amendments to the final rule.

List of Subjects in 29 CFR Part 2200

Administrative practice and procedure, Hearing and appeal procedures.

Accordingly, 29 CFR part 2200 is amended by making the following technical amendments:

PART 2200—RULES OF PROCEDURE

1. The authority citation for part 2200 continues to read as follows:

Authority: 29 U.S.C. 661(g), unless otherwise noted.

Section 2200.96 is also issued under 28 U.S.C. 2112(a).

2. Revise § 2200.3 to read as follows:

§ 2200.3 Use of number.

Words importing the singular number may extend and be applied to the plural and vice versa.

3. Amend § 2200.4 by revising paragraph (a)(6)(i) and adding paragraph (a)(7) to read as follows:

§ 2200.4 Computing time.

(a) * * *

(6) * * *

(i) The day set aside by statute for observing New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Juneteenth National Independence Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, or Christmas Day; and,

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(7) *Computation examples.* (i) If a judge orders that a document is due in 40 days, count every calendar day starting the day after that order (day 1) until reaching day 40 (due date). If the receiving Commission office is closed on day 40 (such as on a Saturday, Sunday, or Federal holiday), the document would be due the next day the office is open. In other words, if day 40 falls on a Saturday, and the following Monday is a Federal holiday, the document would be due on Tuesday, the day after the holiday.

(ii) If a judge orders that a document is due 14 days before a hearing, count backwards starting the day before the hearing (day 1) until reaching day 14. If the

receiving Commission office is closed on day 14 (such as on a Saturday, Sunday, or Federal holiday), the document would be due on the last day the office is open before the Saturday, Sunday, or Federal holiday. In other words, if day 14 falls on a Sunday, and the Friday before is a Federal holiday, the document would be due on Thursday, the day before the holiday.

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4. Amend § 2200.6 by revising the first sentence of paragraph (a) to read as follows:

§ 2200.6 Record address.

(a) Every pleading or document filed by any party or intervenor shall contain the name, current address, telephone number, and email address of the party or intervenor's representative or, if there is no representative, the party or intervenor's own name, current address, telephone number, and email address. * * *

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5. Amend § 2200.7 by revising paragraph (h) to read as follows:

§ 2200.7 Service, notice, and posting.

* * * * *

(h) *Special service requirements; authorized employee representatives.* The authorized employee representative, if any, shall be served by the employer with the notice set forth in paragraph (g) of this section and with a copy of the notice of contest or petition for modification of the abatement period.

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6. Amend § 2200.8 by:

- a. Revising the last sentence of paragraph (c)(1);
- b. Adding a sentence to the end of paragraph (c)(2); and
- c. Revising paragraph (d)(1) and the first sentence of paragraph (d)(5).

The revisions and addition read as follows:

§ 2200.8 Filing.

* * * * *

(c) * * *

(1) * * * Documents may not be filed with the Commission or the Judge via email, unless allowed under paragraph (d)(1) of this section.

(2) * * * Documents may not be filed with the Commission or the Judge via email, unless allowed under paragraph (d)(1) of this section.

* * * * *

(d) * * *

(1) *How to file.* Documents may be filed by postage-prepaid first class or higher class U.S. Mail, commercial delivery service, personal delivery, or facsimile transmission. Only documents exempt from e-filing under paragraph (c)(5) of this section may be filed by email.

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(5) *Sensitive information.* Unless the Commission or the Judge orders otherwise, in any filing with the Commission, information that is sensitive but not privileged (e.g., Social Security numbers, driver's license numbers, passport numbers, taxpayer-identification numbers, birthdates, mother's maiden names, names of minors, an individual's physical personal address, financial account numbers) shall be redacted. * *

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7. Amend § 2200.32 by revising the third sentence to read as follows:

§ 2200.32 Signing of pleadings and motions.

* * * The signature of a representative or party also constitutes a certificate by the representative or party that the representative or party has read the pleading, motion, or other document, that to the best of the representative's or party's knowledge, information,

and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not included for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. * * *

8. Amend § 2200.37 by revising paragraph (d)(3) to read as follows:

§ 2200.37 Petitions for modification of the abatement period.

* * * * *

(d) * * *

(3) An employer petitioning for a modification of the abatement period shall have the burden of proving in accordance with the requirements of section 10(c) of the Act, 29 U.S.C. 659(c), that such employer has made a good faith effort to comply with the abatement requirements of the citation and that abatement has not been completed because of factors beyond the employer's reasonable control.

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9. Amend § 2200.68 by revising paragraphs (a) and (b) and the first sentence of paragraph (d) to read as follows:

§ 2200.68 Recusal of the Judge.

(a) *Discretionary recusal.* A Judge may recuse themselves from a proceeding whenever the Judge deems it appropriate.

(b) *Mandatory recusal.* A Judge shall recuse themselves under circumstances that would require disqualification of a Federal judge under Canon 3(C) of the Code of Conduct for United States Judges, except that the required recusal may be set aside under the conditions specified by Canon 3(D).

* * * * *

(d) *Ruling on request.* If the Judge finds that a request for recusal has been filed with due diligence and that the material filed in support of the request establishes that

recusal either is appropriate under paragraph (a) of this section or is required under paragraph (b) of this section, the Judge shall recuse themselves from the proceeding. * * *

10. Amend § 2200.70 by revising the last sentence of paragraph (f) to read as follows:

§ 2200.70 Exhibits.

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(f) * * * Any person granted custody of an exhibit shall inform the Executive Secretary of the status every 6 months (e.g., 6 months after January 15 would be July 15) of the person's continuing need for the exhibit and return the exhibit after completion of the proceeding.

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11. Amend § 2200.120 by revising the first sentence of paragraph (b)(1) and paragraph (d)(1) to read as follows:

§ 2200.120 Settlement procedure.

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(b) * * *

(1) *Applicability.* Mandatory settlement applies only to notices of contest by employers in which the aggregate amount of the penalties sought by the Secretary is \$205,000 or greater. * * *

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(d) * * *

(1) *General.* The Settlement Judge shall convene and preside over conferences between the parties. The Settlement Judge shall designate the time, place, and nature of the conference.

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Cynthia L. Attwood,

Chairman.

Amanda Wood Laihow,

Commissioner.

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